

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CHRISTOPHER CARSON SMITH,

Plaintiff,

v.

CHAD E. MARKWELL, et al.,

Defendants.

Case No. 23-11067

Honorable Jonathan J.C. Grey

Magistrate Judge Anthony P. Patti

**ORDER ADOPTING REPORT AND RECOMMENDATION TO  
DENY MDOC DEFENDANT MIKEL’S MOTION FOR SUMMARY  
JUDGMENT BASED ON EXHAUSTION (ECF No. 61)**

**I. INTRODUCTION**

Pro se plaintiff Christopher Carson Smith filed this 42 U.S.C. § 1983 lawsuit against multiple defendants based on his efforts to submit and execute a “prisoner advance directive – do not resuscitate order.” (ECF No. 1, PageID.8–13.) This matter comes before the Court on Magistrate Judge Anthony P. Patti’s Report and Recommendation dated July 29, 2024. (ECF No. 61.) In the July 29, 2024 Report and Recommendation, the Magistrate Judge recommends that the Court deny Mikel’s motion for summary judgment based on exhaustion (ECF No. 40), but he does not address motions filed at ECF Nos. 45, 46, and 52.

Smith has filed objections to the Report and Recommendation. (*See* ECF No. 64.)<sup>1</sup>

## **II. ANALYSIS**

The Court has had an opportunity to review this matter and finds that Judge Patti reached the correct conclusions for the proper reasons in the Report and Recommendation. The Court has reviewed Smith's objections to the July 29, 2024 Report and Recommendation and comes to the following conclusions.

### **A. Grievance LCF-0461**

In his first objection, Smith argues that grievance LCF-0461 exhausts his available administrative remedies and should not be dismissed from the case. (ECF No. 64, PageID.814.) The Court finds that the record does not support Smith's argument; specifically, Smith's contention that LCF-0461 "grievance did in fact deal with the event of May 25, 2022." (*Id.* at PageID.813.) In fact, the pages cited by Smith

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<sup>1</sup> In a document dated August 5, 2024 and filed on the docket on August 9, 2024, Smith purports to object to a "Report and Recommendation" issued by Judge Patti. (ECF No. 62.) The order that Smith references in the objections at ECF No. 62, however, was a July 16, 2024 "Order Setting Deadlines for the MDOC's Response to the Court's June 18, 2024 Text-Only Order Regarding Plaintiff's Motion for Substitution." (*See* ECF No. 59.) As the objections filed at ECF No. 62 have no bearing on the Report and Recommendation at issue in this Order, the Court does not address at this time the objections at ECF No. 62.

reflect that the date of the incident about which he complained in LCF-0461 was June 17, 2022. (*See, e.g.*, ECF No. 44, PageID.330; ECF No. 48-1, PageID.702.) Accordingly, the Court **DENIES** Smith's first objection.

**B. Carolyn Nelson's July 27, 2023 Affidavit**

In his response to Mikel's motion for summary judgment, and as his second objection to the Report and Recommendation, Smith contends the Court should strike Carolyn Nelson's June 27, 2023 affidavit for Step II grievances. (ECF No. 40-1, PageID.279–280; ECF No. 64, PageID.814.) Smith argues that the affidavit should be stricken due to “noncompliance with administrative procedural requirements.” (ECF No. 64, PageID.814 (citing ECF No. 40, PageID.275).) Like Judge Patti, the Court finds that the affidavit, although eight months old when filed, remained valid because it was lawfully notarized when prepared and signed by Nelson. Accordingly, the Court: (1) does not agree that the affidavit was noncompliant, and (2) concludes that Smith's objection regarding Nelson's affidavit must be **DENIED**.

**C. Conclusion**

Finding no error in the Magistrate Judge's July 29, 2024 Report and Recommendation, the Court adopts the Report and Recommendation

(ECF No. 61) in its entirety.

### **III. CONCLUSION**

For the reasons stated above,

**IT IS ORDERED** that the Report and Recommendation dated July 29, 2024 (ECF No. 61) is **ADOPTED** as this Court's findings of fact and conclusions of law.

**IT IS FURTHER ORDERED** that Smith's objections to the July 29, 2024 Report and Recommendation (ECF No. 64) are **DENIED**.

**IT IS FURTHER ORDERED** that Mikel's motion for summary judgment based on exhaustion (ECF No. 40) is **DENIED**.

**SO ORDERED.**

DATED: September 5, 2024

**s/Jonathan J.C. Grey**  
**JONATHAN J.C. GREY**  
United States District Judge

**Certificate of Service**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First-Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 5, 2024.

s/ S. Osorio  
Sandra Osorio  
Case Manager